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Author
Shiffrin, Seana

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Deception

Seana Valentine Shiffrin
and Christoph Fehige and Ulla Wessels

I—Seana Valentine Shiffrin

Learning about Deception from Lawyers

Legal domains concerned with deception often recognize and regulate cases of *negligent deception*. The philosophical discussion of deception should follow suit, shifting from an exclusive focus on deception-as-wrongful-manipulation to a broader panorama that includes negligent deception and contemplates cases in which negligent deception may be wrong even when intentional deception about the same information may be permissible. Interesting philosophical questions then arise about what distinguishes negligent deception from mere misunderstandings and mistakes. Those questions require further thought about how relationships involve epistemic cooperation and interdependence, and when such relationships generate responsibility for others' mental contents.

Don't be fooled by my title. What follows is not an object lesson about legal chicanery. My title is more literal than sardonic: philosophers have something to learn from how the law treats deception. Legal domains concerned with deception often recognize and regulate cases of *negligent deception*. The philosophical discussion of deception should follow suit, shifting from an exclusive focus on deception-as-wrongful-manipulation to a broader panorama that includes negligent deception.

By negligent deception, I mean deception in which the deceiver does not aim to cultivate a false belief in the recipient but does so nonetheless, culpably and predictably, through negligence. For example, suppose that to deflect a parent's critical question about UCLA's track record on gender representation, I remark, truthfully, that 'the famous philosopher Hilary Putnam earned a Ph.D. from us as far back as 1951', banking on the parent assuming Hilary Putnam was a woman. That's a classic case of non-lying deception. Suppose instead that during a wide-ranging discussion with parents about UCLA, one that has earlier included descriptions of our current strong efforts to promote gender representation but has since progressed to other topics, I brag about our alumni, mentioning that 'the famous philosopher Hilary Putnam earned a Ph.D. from us as

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far back as 1951'. In the moment, I am concentrating on how remarkable this fact is given UCLA's tender age in '51. I am not attending to the fact that Putnam's fame does not extend far outside philosophical circles; so, I do not consider that I may leave the wrong impression about our twentieth-century track record of producing Ph.D.s by women. The parental audience leaves thinking that our currently impressive climate for women stretches back to the mid-century. I regard this as a case of 'negligent deception'.

Contemplation of negligent deception raises some fresh philosophical issues about what deception is and when and why it is wrongful. For example, what distinguishes negligent deception from mere misunderstandings and mistakes? Answering this question and others requires further thought about epistemic cooperation and interdependence, and about when communicative relationships generate responsibility for others' mental contents.

At the outset, I should acknowledge that the term 'negligent deception' might strike some as oxymoronic. Some may prefer the terms 'negligent misrepresentation' or 'negligent misleading'. I do not share those preferences, partly because 'misrepresentation' may connote a 'representation', which may obscure deception through behaviour or through silent omissions. In addition, 'misrepresent' is a speaker-oriented term, whereas 'deceive' and 'deception' flag that *the audience's beliefs are adversely affected*, a central fact grounding its wrongfulness. 'Negligent misleading' suffers from similar problems, since speech may be misleading in its tendency without succeeding in fact.

In any case, my interest lies predominantly in the phenomenon rather than the term. It isn't merely that we should be concerned to avoid being the object of intellectual manipulation, as the common focus on intentional deception might suggest. As thinkers who are interested in and depend upon what others say and do, we are vulnerable to errors communicated through others' agency, whether those errors are triggered deliberately, knowingly, negligently, or by accident. This gives us reason to investigate ethical questions about the scope of responsibility others bear toward these vulnerabilities, questions that attention to 'negligent deception' squarely raises. The term, however, should not be a sticking point that prevents embarking on the ethical inquiry. If 'negligent deception' chafes, you may use either substitute with appropriate mental caveats. In the

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alternative, 'leaving a person with a false impression' is roughly correct, although it is more cumbersome.

I

The Possibility of Negligent Deception. Enough prelude. Let's begin in earnest by distinguishing the topic of deception from the topic of lying.[1] Not all deception involves lying, and not all lies involve deception. A lie involves the assertion by a speaker of a proposition she does not believe but offers in a context in which it is to be taken as true (or, at least, as believed by her). Deception involves a person's forming a false belief (or having one reinforced) due, in substantial part, to the relevant agency of another person—whether through her qualifying speech, silence, behaviour, or an omission. This characterization is incomplete, because it does not define what the *relevant* agency of another person is, or in other words, what counts as *qualifying* speech, etc. These criteria matter because they demarcate the lines between deception and faultless mistake and pure listener error. Those demarcations become thornier once we focus on negligent deception. For the moment, we can work with central cases about which there is no question but that the deceiver is responsible for the recipient's false beliefs.

Deception thus differs from lying in a number of respects. First, deception need not involve a statement the speaker does not believe. In some cases, a speaker may deceive without lying, when she utters her true belief but her audience infers something false (often due to an implicature, a predictable interpretative ambiguity, the listener's ignorance of pertinent information, or a false intermediate premiss possessed by the listener).[2] Second, although lies, such as transparent lies, may not be believed by their recipients, and their explicit content need not be false (as when the liar is herself mistaken), deception inherently involves the acquisition or reinforcement of a false belief by the recipient in non-accidental response to the deceiver's speech or behaviour. Third, the lie is always wrongful (Shiffrin 2014, pp. 9–24), but not all deception is wrongful. For example, although their identification is a delicate matter, there seem to be some permissible cases of non-lying deception to protect one's legitimate privacy.

[1] See also Shiffrin (2014, pp. 19–26).

[2] Further, unlike lying, deception needn't occur through discourse. Behaviour will do, as when I lead you to think I am on a call by putting a phone to my ear.

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These differences drive my understanding of the related but distinct wrongs of lying and wrongful deception. I take the wrong of the lie to be grounded in the liar's abuse of the channel of testimony as a reliable and distinctive mode of access to the contents of the speaker's mind. The wrong of deception (when it is wrong) is grounded in a violation of a duty to take due care not to cause another to form false beliefs based on one's behaviour, communication or omission (Shiffrin 2014, pp. 21–6). Attending mainly to cases of non-lying deception through communication, my topic here, roughly speaking, is whether the duty of due care must be breached *intentionally* for deception to occur and for it to be wrongful. I think not, but this denial raises interesting philosophical issues about what sorts of responsibility we have to think and speak accurately and to ensure we are accurately understood and interpreted.

Many philosophers tend, almost reflexively, to describe deception and its wrong as varietals of intentional manipulation.[3] The deceiver aims to manipulate a listener (or observer) by intentionally imparting (or reinforcing) false ideas, an unacceptable way to treat another rational being. While a manipulative aim often drives deception, one might speak deceptively and influence one's audience to believe the false when one wasn't trying to persuade and manipulate. Other motives may underlie deception—such as an aim to disguise the truth, a refusal to admit the truth, or laziness with respect to verifying the truth, to crafting one's communication carefully, or to paying sufficient attention to how one's communication may be received. Often, false beliefs will distort the deliberations of the deceived to the benefit of the deceiver, so the effect, if not the aim, may be considered manipulative in a stretched sense of 'manipulative'.

Still, distorted deliberation is not a necessary effect of deception; nor are decisions that redound to the deceiver's benefit. If my careless speech gives rise to a false belief in my interlocutor, that false belief may be deliberatively inert. Or, should it play an active role in decision making, it could generate a headache for us both—whether, for example, because I will appear irresponsible, because we are coordinating and the misapprehension is a barrier to our cooperation, or because I am responsible for his welfare and the false belief endangers him. That suggests that the wrong of deception must be

[3] See, for example, Carson (2010), Korsgaard (1996), Lackey (2013), and Mahon (2007). Fallis (2010) and Adler (1997) acknowledge, but do not explore, that deception need not be intentional.

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understood in broader terms, referring to the deceiver's breach of a duty of care with respect to the deceived's mental contents. I claim that, because neither the aim nor the effect of manipulation are essential to deception, wrongful deception is better understood as a breach of a duty of care for the mental contents of the deceived, where the aim or effect of manipulation is simply a strongly salient variant of the category.

I was originally led to this position by reflecting on the law's treatment of cases of deception that are not intentionally manipulative.[4] Thinking about the cases regulated by the law of deceptive advertising and of defamation, one finds many cases of negligent, wrongful deception to which liability attaches.[5] That is, in plenty of cases, an agent's speech drives the formation of false beliefs in an audience, and the agent is held responsible for that outcome given that agent's identity, role, activities, circumstances, and other responsibilities. Yet the agent did not aim to cause those false beliefs. In such cases, when assessing liability or damages, the law does typically not require a showing of the intention to deceive, just the foreseeable tendency to cause the audience to form a false belief.

Consider this Anacin-3 advert: 'Hospitals recommend acetaminophen, the aspirin-free pain reliever in Anacin-3, more than any other pain reliever.'[6] It was true, grammatically and precisely worded, and informative. One can imagine that the author did not intend to deceive, but just aimed to state the facts plainly and concisely. Yet, despite its clarity and accuracy, the advertisement had the tendency to lead audience members to draw the false conclusion that Anacin-3 was the *brand* prescribed most by hospitals. A court therefore issued an injunction against further distribution of that advertisement on the grounds it was deceptive, without requiring evidence that the deception was intended. Notice that the listener's error is not all that epistemically reasonable, although it may be predictable and understandable given the appropriate amount of time and intellectual attention listeners should pay to the cascade of advertisements that

[4] To be sure, in some important areas such as criminal fraud, the law of deception requires evidence of intent to deceive. Excellent overviews of US regulation of deception, including when the law does and does not attend to purpose, appear in Klass (2012, 2018).

[5] See also Klass's discussion of interpretative laws and causal-predictive laws that include domains of negligence and strict liability for deceptive speech (Klass 2012, pp. 460, 466–9, 471).

[6] *American Home Products Corp.* v. *Johnson & Johnson*, 654 F. Supp. 568, 588–9, 591 (1987).

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bombard them.[7] Even supposing that the speaker did not intend the audience to draw the false conclusion, the speaker had reason to think that time-pressed readers might, predictably, make this mistake, and the speaker had a responsibility to ensure that readers not make this error.

Take another example, this time from the realm of defamation law, which is thickly populated with cases of negligent defamation which often involve liability for negligently deceiving other people in ways that disparage a victim's reputation.[8] US defamation law permits (private) plaintiffs to recover damages for actual injury for remarks damaging to their reputation when the defendant knew or would have known, had he exercised reasonable care, that his statements were false or would create a material, false impression in third parties.[9]

In some defamation cases, the speaker is held responsible for an understandable interpretation of what she said that an audience believed, even when the speaker intended to express something different which was an alternative, reasonable interpretation of what she said. Still, she may have negligently conveyed, and the audience may have believed, a false, negative statement about the plaintiff.[10] In these cases, the negligence surfaces not in the failure to verify the

[7] See also Shiffrin (2018). Richard Craswell has long been interested in rules of information disclosure, effective communication, and the vagaries of consumer uptake, more from a law and economics perspective than an ethical perspective (Craswell 1985, 1991, 2006).

[8] To be forthright, my interest lies in the *pattern of liability* in defamation cases, including the fact that liability for negligent deception is common; typically, these cases do not directly invoke the language of 'deceit', 'deceived' or 'deception.' Also, there can be defamation liability without *proof* that an audience was deceived. Still, damage awards in the US often turn on the consequences of audience deception. Outside the United States, though, other common law jurisdictions like Canada and the UK recognize strict liability for defamation (thus including negligent defamation) and defamation per se, which permit damage awards on the presumption of reputational damage without necessitating proof of financial loss or specific reputational damage.

[9] In the United States, however, the First Amendment precludes liability for negligent defamation against a public official, candidate for public office, or other public figure: *New York Times* v. *Sullivan*, 376 US 254 (1964); *Curtis Publishing* v. *Butts*, 388 US 130 (1967). Plaintiffs in those categories must show the defendant-speaker knew her statements were false or issued them with reckless disregard for the truth.

[10] *Arno* v. *Stewart*, 245 Cal. App. 2d 955, 960 (1966): 'If the language ... is capable of two meanings, one of which is harmless and the other libelous ... it is the province of the jury to determine in which sense the language was used and understood by the readers ...'; see also *Monroe* v. *Hopkins*, [2017] EWHC 433 (QB) (UK) at 422: '[The] meaning that the court should adopt is ... determined by reference to what the hypothetical reasonable reader would understand in all the circumstances.'

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accuracy of one's statement, but in one's attention to the clarity, reception and uptake of what one says.[11]

This colourful case arose in my home state of California. A car dealer was live-broadcasting a commercial on his car lot, as he made a regular practice of doing. Defendant, consumed with fury because the dealer had parked a car on his adjoining property, stormed up to him while he was on air, in full view of the cameras, and menacingly hurled an epithet at him implying canine parentage. Although Defendant was just an angry neighbour, the plaintiff dealer contended that Defendant's speech and behaviour conveyed to viewers and potential customers that Plaintiff had cheated Defendant in a prior car sale. The jury found Defendant liable for slander; an appellate court agreed that a reasonable audience would incorrectly take Defendant to be an aggrieved customer protesting Plaintiff's unfair business practices. Indeed, a member of the television audience testified that from watching Defendant's outburst, she 'came to the conclusion that if one bought a car from respondent, one might expect unfavorable treatment'.[12] Defendant did not aim to deceive a television audience about Plaintiff's business practices; he was pursuing a personal complaint about trespass. Yet he was negligent in failing to consider how his speech and behaviour might be taken in the circumstances, and in failing to craft his message so it would not be susceptible to misinterpretation.[13]

II

A Bifurcated Account of Deception. The fact that the law sometimes holds people responsible for cases of negligently caused false beliefs

[11] In many defamation cases, the negligence inheres in the speaker's epistemic basis for her assertion. She may mistakenly believe what she says, but she misleads her audience because she speaks authoritatively but falsely, has not taken sufficient care to verify the accuracy of her remarks, and convinces her audience of a false, critical claim about the defamed. One may question whether *A* could deceive *B* to think *P* (falsely) when *A* believes *P*. To some, deception involves some epistemic asymmetry between speaker and recipient. I'm inclined, however, to think it suffices that *A* had the responsibility to *B* to be right about *P*, was culpably mistaken, and compounded that error by passing it on to *B*. But here I bracket this issue and focus on cases involving negligence in communication.

[12] *White* v. *Valenta*, 234 Cal. App. 2d 243, 245 (1965).

[13] See also *Memphis Pub. Co.* v. *Nichols*, 569 SW 2d 412, 414, 420–1 (1978) (applying a negligence standard and finding defamatory a truthful report that Mrs Newton shot Mrs Nichols after Newton 'arrived at the Nichols home and found her husband there with Mrs. Nichols'; by omitting to mention that Mr Newton and Mrs Nichols were found talking with three others in the living room, the statement insinuated that Mrs Nichols and Mr Newton were engaged in adultery when Mrs Newton shot them).

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does not, of course, mean that it's right to do so. And the false conclusions audiences reach in response to speech or behaviour by agents might not represent cases of deception. What makes them cases of deception, rather than cases of mere audience mistake or some other sort of misunderstanding, perhaps culpably induced? On those accounts that identify deception with intentional manipulation, what may distinguish mistake from deception is the absence of a speaker's manipulative intention.

Such accounts, however, not only fail to recognize the legal categories I have just described, they also fail to capture other clear cases, such as that of the reflexive, pathological, but persuasive liar who persuades his audience of something false but is entirely indifferent to what they think; he is not interested in manipulating them or in what they believe, but rather habitually avoids voicing the truth. He deceives his audience, even if his narcissism precludes the other-regarding motives of manipulation. It surely understates matters to say that his audience is merely mistaken.

More generally, if the reason we are interested in deception as a category is because we are interested in protecting the accuracy of our beliefs, then we should take seriously that other people's behaviour and communication are both important sources of beliefs and sites of epistemic vulnerability. If we are concerned with believers' states of mind, we should not restrict our attention to cases in which one person intentionally seeks to implant a false belief in others, to the exclusion of other cases in which morally irresponsible agency causes another's false belief. So, unless it posits intermediate categories, the standard account may yield an overly narrow view of what counts as deception and risks positing an overly capacious view of what counts as mistake.

Putting aside responsibilities to be accurate in one's own beliefs, the standard account may also encourage the idea that so long as one does not lie or seek to implant false beliefs in others, one stands on safe ethical ground regarding the epistemic dimensions of one's communications with others. This hazards an overly casual approach to the vitality of our system of epistemic interdependence, one that functions primarily through communication. Because we flourish through sharing information and using epistemic divisions of labour, we must take seriously how successful our communications are—including whether they are properly understood. To offer adequate support for this system and to be appropriately sensitive to

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the vulnerabilities generated by our epistemic interdependence, it will not suffice merely to avoid lies and manipulation.

Given the preceding considerations, I submit that the category of morally significant deception includes negligent deception. Some challenges accompany that recognition, though, including that one be able to distinguish deception from mere mistake. Rather than appealing solely to the speaker's intention to deceive, we might appeal to a broader consideration, namely, to whether the agent reasonably bears responsibility for the audience member's mental content.[14] Consider this case: Phoebe, a set designer, is experimenting with a new tent design for a play involving the circus. Working from home one afternoon, she pitches the tent around the perimeter of her cottage to gauge how the fabric sways. Some passers-by see it and falsely conclude the neighbourhood has termites for which the house is being fumigated. I regard this as a case of mistake, not deception, because Phoebe owes no duty of care to passers-by to ensure the accuracy of their conclusions about the neighbourhood. Things may differ with her neighbours, who have informed her of their concerns about chemical fumigation. Although she registered their concerns back when they spoke, now the demands of the theatre absorb her full attention. When she pitches the tent without explaining why and they conclude she proceeded with chemical fumigation for a termite problem, decamping to a hotel for the weekend, it is reasonable to think she (negligently) deceived them. She bears responsibility to her neighbours, given their relationship and their prior conversation, in a way that she does not to the passers-by.

If deception needn't be intentional, then a theory of deception will have to find a way to distinguish between when stimulating false inferences in an observer or an interlocutor counts as deception and when it does not. Some appeal to responsibility may help, as I have just suggested. But drawing this distinction and fleshing out the relevant notion of responsibility poses further philosophical challenges, at least if one attempts to accommodate these other three premisses:

(1) Not all deception involves the listener drawing epistemically *reasonable* inferences from a person's speech or

[14] This broad consideration may fold in intention: acting on the intention to affect someone's thoughts may often trigger a responsibility to do so accurately.

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behaviour. In some cases of deception, the listener or observer draws an unreasonable, if predictable, false inference.

(2) At the same time, not every predictable false inference drawn by a listener or observer in response to a person's speech or behaviour amounts to deception.

(3) Some forms of deception are permissible.

With respect to (1), the Anacin-3 case and others from the deceptive advertising domain represent examples of non-lying deception in which the audience inferences are not always epistemically reasonable, even if they are predictable and understandable. A lying case offers further support. A speaker lies to a listener, while asserting something false. The listener reflexively takes what the speaker says to be true, although some simple reflection might have rendered it evident that the content was implausible or the speaker was palpably unreliable. Still, when a lie produces a false belief because the listener took the speaker's testimony to report the truth, it's plausible to regard this as a case of the speaker deceiving the listener, although the listener's inference that what was conveyed was true may have been epistemically unreasonable.

With respect to (2), recall the passers-by who mistake Phoebe's theatre prop for evidence of fumigation. Another example: generally, if my eavesdroppers at lunch form false beliefs about my vacation plans or my co-worker based on my loose speech, it doesn't seem that I deceive them, even if I know about their eavesdropping. Judgements may vary, though, when I speak about certain topics, such as telling inaccurate stories about the kitchen's cleanliness. If so, this suggests that the content and context of the claim makes a difference: I may have a general duty to people I know are listening to me not to provoke false beliefs about the safety of nearby food, given the importance of food safety and our mutual vulnerability and dependence on one another for these vital facts.

(1) and (2) together may suggest a duty account of deception: when and only when one has a duty toward another's mental contents does one's speech or behaviour resulting in another's false belief count as deception. When I address listeners and invite them to consider my thoughts, I certainly have a duty not to misrepresent my beliefs; depending on the subject matter, I may also have some duties of accuracy about the content of my stated beliefs and the

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predictable inferences listeners may make. It's less plausible that when I do not address listeners I have a duty with respect to the accuracy of their beliefs about mere matters of curiosity to them that are not germane to their welfare (or to some other important value). So one may accommodate (1) and (2) by appealing to duties with respect to the beliefs others form, given either the communicative posture one adopts toward them, the nature of the *content* of their predictable inferences, or both.

(3) makes a duty account difficult, however. If some deception is permissible, then deception is not well defined in terms of a duty to the listener to protect the accuracy of her mental contents. I have in mind cases of intentional, non-lying deception in which the speaker reasonably and permissibly acts to protect her privacy. For example, a nosy acquaintance asks at a party whether you have yet had a colonoscopy; to divert the inquiry, you reply, 'I hear different things from different people about the experience, but I hope to avoid thinking more about it until I must', thereby suggesting, falsely, that you have not yet had one. You mean you hope to avoid (further) thinking about it until you must think about it (again), but you intentionally craft your response to encourage the false belief that you have not yet had the procedure. Here you deceive, but it seems utterly permissible, because you do not lie or directly misrepresent, and because by poking around for information, the inquisitor threatens, perhaps inadvertently, to trespass onto private territory onto which one has a right to exclude.

A bifurcated approach to characterizing deception offers an alternative:

> One deceives when one leads another by intention to form or reinforce a false belief *or* when one leads another, in a relevant way, to form or reinforce a false belief by failing to fulfil a duty to take due care toward the other's mental contents.

This approach to characterizing deception would be bifurcated in two related senses: (a) it would refer to a duty in one part but not another, and (b) intentional deception could sometimes be permissible, but not negligent deception. On the other hand, it is consistent with a unified account of *wrongful* deception, namely, that deception is wrongful when and because it leads another to a false belief through a failure to take due care for another's mental contents. Given its

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ability to accommodate the three premisses outlined above, the bifurcated characterization of deception seems attractive.

I take (b) to represent a strength, not a shortcoming.[15] Let me offer an example, a case in which intentional deception may be permissible but not negligent deception, although the deception concerns the same content. Suppose Bette receives a diagnosis that she has Stage IV breast cancer, and suppose there is some temporally loose duty to tell one's closest friends that one's ill. It's early days, and Bette is not ready to face the sense of fixed reality that comes with others' knowledge and the pressures associated with their reactions, however sympathetic. A close friend asks about her test results. To preserve her privacy just a little longer, Bette replies truthfully, 'It's still an unsettled matter', referring to her emotional state post-diagnosis but correctly predicting that the friend will interpret her as saying the results are not in. Compare this with a case in which Bette is just too self-absorbed to think about her friends. When another close friend asks how she is, Bette reflexively but deceptively replies, 'Healthy as a horse, whatever that means!' In a third case, Bette visits another friend with whom health matters are not standard conversational fare, and says nothing, because—as usual—the subject does not arise, and the friend draws no conclusions about Bette's health. Bette acts permissibly in the first case, though she deceives, and wrongly in the second case because she negligently deceives (though perhaps her self-absorption may be excused); in the third, further facts might lead one to conclude that she violates the duty of friendship to share crucial information, but she has not deceived.

Why think this? With intentional deception for privacy, what is salient is not just that she means to deceive, but does so for a justified reason: to protect her zone of privacy to digest the news. That reason then regulates the scope of the deception—at least limiting it to what is required to protect that privacy—and its duration, thereby helping to delineate the temporal boundaries of the duty to share. The deception does not range indiscriminately. In contrast, when deception is negligent, because it does not involve consideration of the interests of the listener or a positive reason for permitting it, that action cannot be justified by the agent's sensitivity to her own privacy. Thus the deception lacks a deliberative justification, and therefore lacks

[15] In Shiffrin (2017), I contest the standard view that intentional wrongdoing is always worse than negligent wrongdoing. Cases of this kind serve as further evidence that wrongfulness has a complex but intimate link to the agent's motive (Herman 2011).

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bounds to its scope and duration. Although the information could have been permissibly shielded if this was done deliberately, it matters that it was not done so under that justification. Consequently, in a domain in which the speaker should take due care for the listener's mental contents (specifically about matters integral and salient to a friendship), the negligent speaker fails to take *due care*, whereas the person who deceives intentionally for a justified reason, within its demarcated scope and duration, does demonstrate due consideration for the listener's beliefs.

III

What Is the Scope of the Duty of Care for Others' Mental Contents?
On either a duty or a bifurcated account, better understanding what deception involves and when and why it is wrongful involves at least two tasks. First, it involves better understanding what duties of care we have concerning others' mental contents—for example, what information must be shared, which mistakes should be tolerated, and which mistakes must be corrected. At the same time, deception is not simply another term for any culpable case of misleading or failure to educate or correct. It may be vicious to tell a scandalous autobiographical fiction to friends who know one's tales are tall when one also senses a lurking eavesdropper who's not privy to the joke. Still, it isn't deception. The listener may be deceived, though the *speaker* did not deceive. Further, failure to fulfil a duty to educate does not always amount to deception by omission. The grammar teacher who lazily permits his students to surf the web for the hour rather than correcting their misapprehensions about the apostrophe has not necessarily *deceived* them that 'its' and 'it's' are interchangeable (although he may have deceived them that their punctuation errors do not urgently require correction). Deception also seems to involve an entitlement by deceived parties reasonably to think (even if only in retrospective reflection) that they are entitled to draw warrants about the particular subject from their interactions with a person or from an environment under that person's control. The deceiver supplies, however indirectly and inexplicitly, a warrant to believe something that, as it turns out, is false. Hence, the second task is to come to a better understanding of what gives rise to that entitlement. They

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are not disconnected tasks. Nor are they offered in order of priority. A speaker who does not otherwise have a duty to educate or correct a listener about a topic may gain that duty through taking the initiative to speak to the listener about it, thereby rendering the listener vulnerable to the speaker's influence.

In what follows, I muse about some philosophical complexities involved in pursuing these two tasks. To start: we cannot easily adopt a 'do no harm' position, namely, that we must always avoid providing the occasion for others' false beliefs. It would be an all-occupying task, even if we were to adopt principles of limitation such as that our responsibility only extends to *predictable* false beliefs outside a reasonable zone of privacy. My appearance, behaviour and speech may stimulate many false and predictable beliefs about my age, background or desires that I could not possibly be charged with rectifying. Even limiting responsibility to only predictable errors arising from inferences about one's *speech* will not adequately control the unfeasibility and demandingness problems. Again, eavesdroppers may predictably come to false conclusions, but it is rarely one's responsibility to whisper or to address the eavesdroppers to protect them from such errors. A further limitation to one's intended audience won't sufficiently mitigate the problem. To vary an earlier case: at a fundraiser, I recite a list of famous philosophers associated with UCLA, including Putnam; predictably, some conclude that Hilary was a woman. Had we been discussing gender under-representation or were a follow-up questioner to refer to Hilary as 'she', I should tactfully correct the misunderstanding. Otherwise, the mere predictability of erroneous inferences by one's audience cannot suffice to generate a responsibility to avert or correct them. To hold otherwise would make one's speech overly hostage to an audience's mental responses rather than being primarily guided by the requirements of unfurling one's own message. The point holds even in tête-à-têtes. Predictably, Sarah's detailed, charitable interpretation of a biblical text may lead her interlocutor to conclude that she is a believer or a biblical scholar, rather than simply a knowledgeable interpreter of that passage. Having to declare her agnosticism may derail a discussion, however. Absent special circumstances, it does not seem as though she must do so to avoid listener error.

Caveat auditor, however, is likewise too extreme a position. Should certain facts alter, responsibility may emerge. If a uniformed police officer obviously eavesdrops, and one's story would

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misleadingly incriminate a neighbour of a serious crime, one must change the subject or broadcast loudly that it is a joke. Should the source of Sarah's biblical knowledge arise explicitly in the conversation, she should disclaim any scholarly credentials. More generally, caveat auditor undervalues the importance of our epistemic interdependence. Given our different epistemic vantage points on the world, we must rely on each other to share information to facilitate divisions of labour, mutual understanding, complex projects, and mutual flourishing. The point of sharing information is not merely to give others a formal opportunity to access information, but for them to absorb it sufficiently.

On many occasions, one should try to avert another's false inference by providing further context or by making the literal truth more explicit. Still, because another person's reasoning and attention is involved, one cannot be charged with the complete responsibility to ensure against the other's error. So while caveat auditor is too severe a posture given the importance of epistemic cooperation, complete responsibility by the speaker to guarantee listener understanding is usually too demanding of speakers, and risks patronizing, intrusive, and otherwise offensive behaviours toward one's audience.

Whether the mistake is dangerous or not *helps* to sort the cases, but like the other factors, dangerousness is not fully decisive. A listener at a talk who falsely judges that the pharmaceutical companies bought me off, and therefore infers that every vaccine I name as safe is in fact unsafe makes serious errors (especially if he has children). Yet, apart from establishing my bona fides and speaking the truth, to avoid deception I needn't do more to correct his error. So the prospect of substantial harm isn't sufficient. Nor is it a necessary condition of responsibility. In many conversational contexts, one may bear responsibility to ensure one's listener does not depart with a false inference with respect to a perfectly ordinary matter.

As has emerged, a number of factors other than importance and predictability of error bear on the question of responsibility. In some cases, we may resist attributions of responsibility to the speaker when the recipient's erroneous inferences are fuelled by some persistent form of unreasonableness—whether it takes the form of sexism, a penchant for conspiracy theory, wishful thinking, or nosiness. In other cases, exercising responsibility for other's beliefs may encroach upon their dignity or their sphere of self-discovery; these deeper

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values may explain why it is sometimes rude or invasive to correct another's error. One should let them learn for themselves by stumbling. In still other cases, we may resist attributions of responsibility because there are too many potential errors to correct.

These contextual complexities may evoke despair about gaining a grip on the boundaries of the duty of care. I cannot alleviate that despair here, but perhaps I can offer some structural insight into the situation. The complexities surrounding the responsibilities to protect against our speech and behaviour sparking others' false beliefs are variations on more general problems about the ethics and justice of information sharing.

Limitations on time and the autonomy of one's own agenda preclude a general requirement to share all one knows or, more narrowly, to correct others' known errors, even with respect to non-proprietary information. (I bracket private information and information gained through special training and investment for which successful pursuit of one's justified aims requires discretion.) For certain material resources, one strategy for circumventing demandingness issues associated with fair sharing is to locate the agent of distributive responsibility in the state or some other impersonal institution (Nagel 1982, p. 200). That locus of responsibility is fitting for other substantial reasons, including the injustice of making some individuals dependent on specific others for material sustenance, thereby exacerbating the contingency of their security and rendering them more vulnerable to exploitation and subservience—whether externally imposed or anxiously self-generated. Similar things may be said about some information resources, such as information about the government and our common environment, and informational access points, including educational resources, libraries, and the Internet. For other sorts of more local information, the moral dynamic interestingly differs.

Sharing information interpersonally does not represent a moral response to a non-ideal state in the way that individual transfers of money or gifts of food to the homeless do. The expectation to offer information is not grounded in substantial need or any principle of managing unusual, unjust or exigent circumstances—as may seen by reflection on the norms around volunteering information and requesting information. We routinely volunteer information—whether to colleagues, neighbours, friends, family members, or people at the market or standing at the corner. It is perfectly

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commonplace to ask and expect perfect strangers, colleagues and friends alike to share information just because they have it. One needn't offer a justification for a request. A passer-by asks if the bells have tolled yet, how often the train comes, the name of the jacaranda tree, or where the Henry Moore sculpture is. The default moral response is to supply the information, whether it fulfils a need of theirs or not, even when they could investigate for themselves by consulting a map or a schedule, and whether or not the absence of posted information is an injustice. *Refusal* is what requires a justification (even if it is only privately rehearsed): it's private; it's confidential; it's upsetting; you ask too often; I'm in a rush; selling that information is how I make my living. Whereas interpersonal requests for material resources from strangers or colleagues usually require some (possibly implicit) positive justification, such as an unexpected need, a shared project, a lingering social injustice, or a willingness to pay.

Many reasons may justify our higher expectations and greater generosity with information than with material resources,[16] even while granting that our stance toward material resources may be, institutionally and interpersonally, indefensibly tight-fisted. Comprehensive, depersonalized information distribution is probably unfeasible, but it also would not figure in one's description of the ideal method of information distribution. Conversations and sharing information perform a number of significant ethical functions and represent important interpersonal pleasures. They are initiation points for relationships, and also central activities of friendships.

Consider information by happenstance—quotidian facts that nearly anyone could have stumbled upon had they been in the right place at the right time in the right mindspace. In the course of living, each of us amasses an enormous amount of information about the world and other people that that might be useful to others. The third stall lacks toilet paper; the fourth stair creaks; yellow loading zones in California are fair game for parking after six. Although its possession does not reflect the fruits of deliberate pursuit of a specified aim,[17] it does reflect and encapsulate a great deal about one's

[16] For example, while money and material resources are scarce, information may be shared without loss to the sharer (bracketing important exceptions). This feature of information is significant, but not dispositive, partly because unearthing and sharing information may take scarce time or resources.

[17] Still, acquiring this sort of information requires attentiveness. The oblivious or absent-minded may be guilty of free-riding on the attentive. There may be a gendered dimension to such patterns of attention and exploitation worth further consideration.

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distinctive path through the world, one's habits, abilities, and predilections of attention. It thereby reflects one's unique perspective on the world and partly constitutes one's distinctiveness as an individual. Thus the signal role of sharing such information in collegial relationships and friendships should come as no surprise.

How does this observation provide 'structural insight'? I have described a problem involving the delineation of responsibility for information collection, dissemination and absorption where there is a sometimes overwhelming volume of information to manage, and a similarly vast terrain of possible errors, as well as a background appreciation of the importance of epistemic cooperation and epistemic interdependence. To return briefly to the law, one broad-brushstroke way to understand the law's approach is as follows. With respect to some bodies of information, given their complexity and their importance, socially beneficial roles of expertise may develop. These roles may be culturally reinforced through practices of certification and licensing. Lay citizens are not expected to develop this expertise. Rather, it is expected that relationships of reliance and dependence will emerge in which the expert may assume disproportionate responsibility for the accuracy of others' beliefs about the subject matter in that relationship with her. To manage the burden of dependence and to protect special investments of time and energy associated with developing that expertise, experts may limit who stands in that relationship to them through such things as requirements of payment for expertise or official declarations of role-relationships.

It may also be relevant that the expert seeks the audience's attention for her benefit, as in the case of commercial advertisers who have special information about their products and who seek the attention and business of consumers. The pursuit of an epistemic relationship with consumers concerning a topic about which the advertiser has unique and perhaps non-replicable information may generate enhanced responsibilities to ensure that that pursuit does not engender misunderstandings by consumers, especially misunderstandings that redound to advertisers' benefit (Shiffrin 2018).

Notably, not every relationship with predictable disparities of information is governed by a strong epistemically protective norm. Take 'arm's-length' relationships between actual or potential contractual partners that have both a (potential) cooperative and a (potential) competitive dimension, as when neither party reveals their true reservation price to gain as high a proportion of the

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bargaining surplus as possible. Even so, each has a responsibility to avoid forming a contract based on a material mistake by the other party of which one has reason to know.[18] Obviously, understanding what amounts to a material mistake and what constitutes good faith would require further unpacking on another occasion. Still, two points are worth noting here. First, 'materiality' limits the scope of the epistemic responsibility to key issues associated with the contract or decision points associated with its formation. Second, even in quasi-competitive relationships where protective standards may be relaxed because the possession of some information is a competitive factor, the fact of a relationship or its potential itself generates some responsibilities of due care toward the potential partner's mental contents.

Our institutional approach finds a parallel in our interpersonal approach. Both relationships and conversations serve as valuable epistemic nodes and important boundaries that mark when higher degrees of responsibility for others' mental contents are triggered. Those boundaries help to ensure that one's level of responsibility for sharing and correcting information is not overwhelming, and that, as a recipient, the incoming flow of information and correction is manageable. The contours of these responsibilities dovetail with the purposes and advantages of epistemic cooperation and with the fact that the diversity of perspectives necessitates that a substantial share of epistemic responsibilities be discharged locally and interpersonally.

The content of the conversation and the depth of the relationship provide further limits and specifications of responsibility. Interlocutors are not responsible for ensuring the accuracy of all their partner's beliefs that might arise from every predictable mental offshoot occasioned by the conversation. But, other things being equal, predictable errors about and closely inferred from the direct subject of the conversational thread are more eligible for duties to correct; all the more so when those erroneous beliefs are aired, and thereby stand ready for confirmation or correction. The circumference of responsibility may widen the closer the relationship between the parties and the greater the interpersonal dependence.

One might think of conversations and relationships as locations of highly specialized expertise, mainly about the parties' own

[18] *Restatement of Contracts*, 2d, §§153 and 161.

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thinking about the topics they set of interest to themselves. Although the ideas of negligent deception and responsibility for others' mental contents may sound highly demanding, at the heart of our practice are important moments of agency. Experts decide to develop expertise and to hold themselves out as experts for others to trust; they control what relationships of dependence they solicit and are then held responsible for managing them with sensitivity. So too, although we do not choose all the relationships we enter, we often exercise substantial agency, in concert with one another, about the level of depth to which they develop; further, the directions and turns taken in conversation then determine our specific responsibilities. On the fly, we render some topics material; others are relegated to a back burner. Although the importance of the information plays some role in determining whether I am my interlocutor's mental keeper, interestingly, it is just a factor. Although the potential privacy of the information plays some role in determining whether I must correct a mistake, that factor cannot be gauged on its own. Information is often not intrinsically private. Whether it should be treated as private depends, partly, on who the interlocutors are to each other, their justified shared purposes, and the degree of mutual steering in setting the course of conversation. Generally, the scope of interpersonal responsibility that undergirds judgements of negligent deception turns less on the qualities of the information or the ramifications of the mistake and more on the relationship between the interlocutors and the specific construction of a conversation: whether they have made the point relevant; whether they regard each other as local experts on the topics discussed; whether they have a burgeoning relationship, an established close, cooperative relationship, a relationship with elements of unilateral or mutual dependence, or more of an arm's-length, sceptical relationship; whether follow-up questions and corrections are possible, and whether they would be stifling and intrusive or welcome and helpful.

To conclude: reckoning with the category of negligent deception requires grappling with large questions about epistemic interdependence's form and value, and about how epistemic responsibility for others interacts with values of privacy, self-determination, self-development, and interpersonal delicacy. The questions are admittedly unwieldy; but it's telling that the prior apparent tidiness of the subject of deception rested so hard on the questionable assumption that deception must be intentional. Even if we restrict 'deception'

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semantically to the intentional behaviour, the phenomena of interest surely occupy a broader, if dauntingly rugged, territory.

Although I have discussed fairly quotidian examples, these questions also have political dimensions. As we struggle to protect our imperfect democratic institutions from destruction and deterioration, and to maintain hope by persisting where possible in our valued practices, there is the risk that our perseverance may be misunderstood to suggest that our political environment remains within the range of normalcy. Among the reasons for protest and civil disobedience is a sense that carrying on as usual misleads one's fellow citizens into complacency, and that one has a responsibility to them to communicate that one regards the situation as dire in a way they absorb.[19]

University of California, Los Angeles
321 *Dodd Hall*
Los Angeles, CA, 90095-1451
USA

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